



# EXHIBIT G



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Laura C. Bremer  
Norman E. Garcia  
Senior Trial Attorney  
U.S. Department of Labor  
90 7th Street, Suite 3-700  
San Francisco, CA 94103

Orrick, Harrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2669  
+1 415 773 5700  
orrick.com

Warrington Parker

E wparker@orrick.com  
D +1 415 773 5740  
F +1 415 773 5759

Re: OFCCP v. Oracle, Inc., et al., Case No. 2017-OFC-00006

Dear Ms. Bremer and Mr. Garcia:

I write in response to you objections to Oracle's Notice of Deposition Pursuant to 41 C.F.R. § 60-30.11 and Federal Rule of Civil Procedure 30(b)(6).

#### Applicable to All Topics

You have offered a series of privilege objections. I believe that there will likely be a dispute about what each party considers privileged. But that said, to refuse to provide a witness based on privilege objections to a 30(b)(6) topic is improper. Rather, any privilege objection must be done on a question by question basis. See, e.g., *EEOC v. Doherty Group, Inc.* 2016 U.S. Dist. LEXIS 156804 \*5-\*6 (S.D. Fla. Sept. 14, 2016); *Florida Ass'n Rehab. Facilities, Inc. v. State of Florida Dept. of Health and Rehab Servs.*, 164 F.R.D. 257, 260 & n. 1 (N.D. Fla. 1995) (citing cases).

Furthermore, your objection based on "exemption provided by the Rules of Practice, Federal Rules of Civil Procedure or Evidence or common law" is not well-taken. See, e.g., *Fischer v. Forrest*, 2017 U.S. Dist. LEXIS 28102 (S.D.N.Y. Feb. 28, 2017); *Liguria Foods Inc. v. Griffith Labs, Inc.*, 2017 U.S. Dist. LEXIS 35370 (N.D. Iowa Mar. 13, 2017). This form of objection does not actually state a precise, coherent privilege and what falls into this category is not clear from the objection itself or from the context as OFCCP does cite specific objections. If the reason for failing to produce a witness falls into the category quoted above, please withdraw the objection or identify specifically the exemptions and common law referenced.

#### Topic No. 1

OFCCP posits that Topic No. 1 seeks "information regarding the sufficiency of OFCCP's underlying investigation." On its face, that is not what Topic No. 1 calls for. If Oracle were to use the evidence gathered for the purposes of testing the sufficiency of OFCCP's underlying investigation, then OFCCP can offer its objection at that time.

However, Oracle is certainly entitled to ask what documents were collected, who was interviewed, how many people were interviewed, how many visits to Oracle there were, what documents were requested



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and not allegedly provided and so on. These questions go to the heart of OFCCP's allegations—including those allegations that depend on Oracle's claimed conduct during the compliance review, *see, e.g.,* Amended Complaint ¶¶ 12, 13—and are not exclusively of use to Oracle were it intending to challenge the investigation.

With all that said and without waiving Oracle's rights to seek a witness on this Topic at some future point, Oracle will not insist on a deposition on this Topic at this time.

#### Topic No. 2

OFCCP posits that Topic No. 2 seeks "information regarding the sufficiency of OFCCP's underlying investigation." On its face, that is not what Topic No. 2 calls for. Indeed, Topic No. 2 makes clear that Oracle is seeking a deposition concerning "the facts that support the allegations of Paragraph 7 of the Amended Complaint" and notes that what this includes are facts specifically alleged in Paragraph 7.

Regarding the objection that the deposition notice is premature and that Oracle withheld documents, OFCCP made the decision to file the Complaint and Amended Complaint when it did. OFCCP investigated Oracle for over a year, conducted interviews, obtained documents, and brought claims as a result. Short of filing a Complaint, OFCCP had a mechanism to seek documents by filing an action seeking documents. 41 C.F.R. § 60-30.31. OFCCP elected not to do so.

In light of this, OFCCP's objection that discovery is premature after it filed a Complaint and Amended Complaint is without merit. OFCCP and the SOL unilaterally made the decision to file an Amended Complaint with allegations that presumably are supported by facts. There must be some set of facts that support the Paragraph 7 of the Amended Complaint. If not, then a witness can explain what facts are and are not possessed by OFCCP and why.<sup>1</sup>

With regard to the statistical analysis, OFCCP objects because it is not "clear" what analysis, statistical data, methodology, or computation is being referenced in Topic No. 2. Moreover, OFCCP claims that the term "used" is not clear. Topic No. 2 is referencing the analyses in Paragraph 7 that OFCCP terms "OFCCP's analyses." OFCCP claims that these analyses "showed the following based on 2014 data controlling for job title, full time status, exempt status, global career level, job specialty, estimated prior work experience and company tenure. . . ." Given that OFCCP is relying on these analyses as the factual basis for its allegations in Paragraph 7 of the Amended Complaint and given that OFCCP has

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<sup>1</sup> OFCCP also claims that its refusal to produce a witness is justified because Oracle refused to produce a 30(b)(6) witness. However, OFCCP agreed to proceed by way of interview and not formal deposition. For this reason alone, this objection is frivolous. As OFCCP has included this objection in each of its responses, this footnote is incorporated into each response to OFCCP's objections to the Topics, set forth below.



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incorporated the Amended Complaint and NOV into its interrogatory responses as the facts that support the allegations of Paragraph 7 of the Amended Complaint, *see, e.g.* Response to Interrogatory No. 2, Oracle is entitled to ask about the analyses and the methods and computations used to arrive at the numbers set forth in Paragraph 7 of the Amended Complaint. Oracle is asking to depose a witness on the facts on which OFCCP has relied in bringing the claim.

As for the final objection—that the topic is duplicative because Oracle has requested information through interrogatories and obtained documents that OFCCP claims bears on the issue, a deposition may be taken even if there are other discovery devices used. *See, e.g., EEOC v. Presrite Corp.*, 2012 U.S. Dist. LEXIS 136094 \*23-24 (N.D. Ohio Sept. 24, 2012); *EEOC v. LifeCare Mgmt. Servs., LLC*, 2009 U.S. Dist. LEXIS 21224 \*6 (W.D. Pa. Mar. 17, 2009). This is all the more true given OFCCP's responses to interrogatories, which, as examples, incorporate wholesale the Amended Complaint and NOV, reference "responsive documents produced during discovery" without identifying which documents are referenced except, in some instances, by providing examples, and states that the OFCCP determined persons were similar by reviewing "evidence" that is not specified. *See* Response to Interrogatory Nos. 2, 5.

### Topic No. 3

OFCCP posits that Topic No. 3 seeks "information regarding the sufficiency of OFCCP's underlying investigation." On its face, that is not what Topic No. 3 calls for. Indeed, Topic No. 3 makes clear that Oracle is seeking a deposition concerning "the facts that support the allegations of Paragraph 8 of the Amended Complaint" and notes that what this includes are facts specifically alleged in Paragraph 8.

Regarding the objection that the deposition notice is premature and that Oracle withheld documents, OFCCP made the decision to file the Complaint and Amended Complaint when it did. OFCCP investigated Oracle for over a year, conducted interviews, obtained documents, and brought claims as a result. Short of filing a Complaint, OFCCP had a mechanism to seek documents by filing an action seeking documents. 41 C.F.R. § 60-30.31. OFCCP elected not to do so.

In light of this, OFCCP's objection that discovery is premature after it filed a Complaint and Amended Complaint is without merit. OFCCP and the SOL unilaterally made the decision to file an Amended Complaint with allegations that presumably are supported by facts. There must be some set of facts that support the Paragraph 8 of the Amended Complaint. If not, then a witness can explain what facts are and are not possessed by OFCCP and why.

With regard to the statistical analysis, OFCCP objects because it is not "clear" what analysis, statistical data, methodology, or computation is being referenced in Topic No. 3. Moreover, OFCCP claims that the term "used" is not clear. Topic No. 3 is referencing the analyses in Paragraph 8 that OFCCP terms "OFCCP's analysis." OFCCP claims that this analysis "showed a standard deviation of -2.10" "based on



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2014 data controlling for job title, full-time status, exempt status, global career level, job specialty, estimate prior work experience, and company tenure." Given that OFCCP is relying on this analysis as the factual basis for its allegations in Paragraph 8 of the Amended Complaint and given that OFCCP has incorporated the Amended Complaint and NOV into its interrogatory responses as the facts that support the allegations of Paragraph 8 of the Amended Complaint, *see, e.g.,* Response to Interrogatory No. 7, Oracle is entitled to ask about the analyses and the methods and computations used to arrive at the numbers set forth in Paragraph 8 of the Amended Complaint. Oracle is asking to depose a witness on the facts on which OFCCP has relied in bringing the claim.

As for the final objection—that the topic is duplicative because Oracle has requested information through interrogatories and obtained documents that OFCCP claims bears on the issue, a deposition may be taken even if there are other discovery devices used. *See, e.g., EEOC v. Presrite Corp.*, 2012 U.S. Dist. LEXIS 136094 \*23-24 (N.D. Ohio Sept. 24, 2012); *EEOC v. LifeCare Mgmt. Servs., LLC*, 2009 U.S. Dist. LEXIS 21224 \*6 (W.D. Pa. Mar. 17, 2009). This is all the more true given OFCCP's responses to interrogatories, which, as examples, incorporate wholesale the Amended Complaint and NOV, reference "responsive documents produced during discovery" without identifying which documents are referenced except, in some instances, by providing examples, and states that the OFCCP determined persons were similar by reviewing "evidence" that is not specified. *See* Response to Interrogatory Nos. 7, 10.

#### Topic No. 4

OFCCP is correct that what is labeled Topic No. 4 should have been identified as (c) under Topic No. 3. As with OFCCP's objections, what is set forth above for Topic No. 3 applies equally. Oracle also assumes that OFCCP does not require a deposition notice that is solely intended to correct this error.

#### Topic No. 5

OFCCP posits that Topic No. 5 seeks "information regarding the sufficiency of OFCCP's underlying investigation." On its face, that is not what Topic No. 5 calls for. Indeed, Topic No. 5 makes clear that Oracle is seeking a deposition concerning "the facts that support the allegations of Paragraph 9 of the Amended Complaint" and notes that what this includes are facts specifically alleged in Paragraph 9.

Regarding the objection that the deposition notice is premature and that Oracle withheld documents, OFCCP made the decision to file the Complaint and Amended Complaint when it did. OFCCP investigated Oracle for over a year, conducted interviews, obtained documents, and brought claims as a result. Short of filing a Complaint, OFCCP had a mechanism to seek documents by filing an action seeking documents. 41 C.F.R. § 60-30.31. OFCCP elected not to do so.

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In light of this, OFCCP's objection that discovery is premature after it filed a Complaint and Amended Complaint is without merit. OFCCP and the SOL unilaterally made the decision to file an Amended Complaint with allegations that presumably are supported by facts. There must be some set of facts that support the Paragraph 9 of the Amended Complaint. If not, then a witness can explain what facts are and are not possessed by OFCCP and why.

With regard to the statistical analysis, OFCCP objects because it is not "clear" what analysis, statistical data, methodology, or computation is being referenced in Topic No. 5. Moreover, OFCCP claims that the term "used" is not clear. Topic No. 5 is referencing the analysis in Paragraph 9 that OFCCP terms "OFCCP's analysis." OFCCP claims that this analysis "showed a standard deviation of -6.55" "based on 2014 data controlling for job title, full-time status, exempt status, global career level, job speciality, estimate prior work experience, and company tenure." Given that OFCCP is relying on this analysis as the factual basis for its allegations in Paragraph 9 of the Amended Complaint and given that OFCCP has incorporated the Amended Complaint and NOV into its interrogatory responses as the facts that support the allegations of Paragraph 9 of the Amended Complaint, see Response to Interrogatory No. 12, Oracle is entitled to ask about the analyses and the methods and computations used to arrive at the numbers set forth in Paragraph 9 of the Amended Complaint. Oracle is asking to depose a witness on the facts on which OFCCP has relied in bringing the claim.

As for the final objection—that the topic is duplicative because Oracle has requested information through interrogatories and obtained documents that OFCCP claims bears on the issue, a deposition may be taken even if there are other discovery devices used. See, e.g., *EEOC v. Presrite Corp.*, 2012 U.S. Dist. LEXIS 136094 \*23-24 (N.D. Ohio Sept. 24, 2012); *EEOC v. LifeCare Mgmt. Servs., LLC*, 2009 U.S. Dist. LEXIS 21224 \*6 (W.D. Pa. Mar. 17, 2009). This is all the more true given OFCCP's responses to interrogatories, which, as examples, incorporate wholesale the Amended Complaint and NOV, reference "responsive documents produced during discovery" without identifying which documents are referenced except, in some instances, by providing examples, and states that the OFCCP determined persons were similar by reviewing "evidence" that is not specified. See Response to Interrogatory Nos. 12, 15.

#### Topic No. 6

OFCCP posits that Topic No. 6 seeks "information regarding the sufficiency of OFCCP's underlying investigation." On its face, that is not what Topic No. 6 calls for. Indeed, Topic No. 6 makes clear that Oracle is seeking a deposition concerning "the facts that support the allegations of Paragraph 10 of the Amended Complaint" and notes that what this includes are facts specifically alleged in Paragraph 10.

Regarding the objection that the deposition notice is premature and that Oracle withheld documents, OFCCP made the decision to file the Complaint and Amended Complaint when it did. OFCCP investigated Oracle for over a year, conducted interviews, obtained documents, and brought claims as a

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result. Short of filing a Complaint, OFCCP had a mechanism to seek documents by filing an action seeking documents. 41 C.F.R. § 60-30.31. OFCCP elected not to do so.

In light of this, OFCCP's objection that discovery is premature after it filed a Complaint and Amended Complaint is without merit. OFCCP and the SOL unilaterally made the decision to file an Amended Complaint with allegations that presumably are supported by facts. There must be some set of facts that support the Paragraph 10 of the Amended Complaint. If not, then a witness can explain what facts are and are not possessed by OFCCP and why.

With regard to the statistical analysis, OFCCP objects because it is not "clear" what analysis, statistical data, methodology, or computation is being referenced in Topic No. 6. Moreover, OFCCP claims that the term "used" is not clear. Topic No. 6 is referencing whatever OFCCP did to be able to allege that there was a "statistically significant adverse impact against non-Asian applicants and a statistically significant disparities in the hiring of Asians versus non-Asians. Given that OFCCP is relying on these disparities as the factual basis for its allegations in Paragraph 10 of the Amended Complaint and given that OFCCP has incorporated the Amended Complaint and NOV into its interrogatory responses as the facts that support the allegations of Paragraph 10 of the Amended Complaint, see Response to Interrogatory No. 17, Oracle is entitled to ask about what must be the statistical analysis and the methods and computations used to arrive at the numbers set forth in Paragraph 10 of the Amended Complaint. Oracle is asking to depose a witness on the facts on which OFCCP has relied in bringing the claim.

As for the final objection—that the topic is duplicative because Oracle has requested information through interrogatories and obtained documents that OFCCP claims bears on the issue, a deposition may be taken even if there are other discovery devices used. See, e.g., *EEOC v. Presrite Corp.*, 2012 U.S. Dist. LEXIS 136094 \*23-24 (N.D. Ohio Sept. 24, 2012); *EEOC v. LifeCare Mgmt. Servs., LLC*, 2009 U.S. Dist. LEXIS 21224 \*6 (W.D. Pa. Mar. 17, 2009). This is all the more true given OFCCP's responses to interrogatories, which, as examples, incorporate wholesale the Amended Complaint and NOV, and reference "responsive documents produced during discovery" without identifying which documents are referenced except, in some instances, by providing examples. See Response to Interrogatory Nos. 17, 19.

#### Topic No. 7

OFCCP has claimed that Oracle refused to provide documents "During Compliance Evaluation." The allegations of Paragraph 12 and 13 actually use the word "refused." And these Paragraphs are introduced with the word "REFUSAL." Furthermore, OFCCP claims that these refusals occurred during the "compliance evaluation," as the introduction to Paragraph 11 makes clear—"REFUSAL TO PRODUCE RELEVANT DATA AND RECORDS DURING THE COMPLIANCE EVALUATION." In light of this, OFCCP's objections are without merit.



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OFCCP objects because Topic No. 7 seeks information regarding the sufficiency of the underlying investigation. That is a ridiculous assertion. Topic No. 7 simply seeks a witness that will provide testimony as to what OFCCP requested, what Oracle failed to provide in response, whether Oracle provided a reason or any response, what OFCCP contends it was deprived of, and how what OFCCP was deprived of bears on the allegations of the Amended Complaint. This is perfectly tailored to meet the allegations of Paragraphs 12 and 13, which allege that Oracle refused to provide documents during the Compliance Evaluation and therefore OFCCP is entitled to some adverse inference.

As for the objection that it is premature to depose a witness on this topic, the activities complained of in Paragraph 12 and 13 happened during the compliance evaluation that OFCCP completed before filing the Complaint and Amended Complaint. Indeed, the objection itself purports to identify some categories of documents Oracle allegedly refused to produce. Apparently not even this list is complete, however, because the sentence identifying the documents allegedly not provided ends with "etc." But in any case, the objection's detail of at least some documents, and the fact that any refusal had to have occurred prior to the filing of the Complaint and Amended Complaint indicates that this is a frivolous objection.

Equally frivolous is the claim that Oracle's failure to provide documents in discovery is a basis for not producing a witness. OFCCP cannot contend that its allegations in Paragraph 12 and 13 depend on what Oracle now produces because the allegations are centered solely on what Oracle allegedly refused during the compliance evaluation. No allegation depends on what Oracle did or did not produce in response to discovery following the filing of the Complaint or Amended Complaint.

OFCCP also objects to the phrases "refusal to produce" and "refused to produce." Both phrases are used by the OFCCP in the Amended Complaint. "Refusal to Produce" is used in the heading immediately prior to Paragraph 11. The phrase "refused to produce" is used by the OFCCP in both Paragraphs 12 and 13. Whether the parties disagree on the meaning of the phrases, both phrases must have some meaning to the OFCCP. That is the meaning to be employed. Similarly, and to forestall any other objection, the word "fail" has the same meaning as the term "fail," used in the past tense in Paragraph 13 of the Amended Complaint.

OFCCP's objection that the topic is burdensome, overbroad, not relevant oppressive and not proportional to the case because Oracle is already in possession of communications is also not a valid basis to refuse to provide a witness. As OFCCP's objection regarding the words "refusal" and "refused" indicates, the parties do not have agreement on the issue of what "refused" meant. Therefore, Oracle is entitled to know what it is that OFCCP contends was "refused." Second, having the communications does not answer, among other things, (1) what it was that OFCCP was looking for in these various documents and data that were refused, and (2) how the refusals bear on the specific allegations contained in Paragraphs 7 to 10.